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No. 89-658

In the Supreme Court of the United States

OCTOBER TERM, 1989

JOHN L. CHEEK, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether in this prosecution for willful violation of the criminal tax laws, the district court erred in instructing the jury that willfulness may be negated by petitioner's asserted good faith misunderstanding of the law only if that misunderstanding was objectively reasonable.

2. Whether the jury instructions in this case violated petitioner's right to have the jury determine his guilt or innocence or offended fundamental notions of fairness.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-15) is reported at 882 F.2d 1263.

JURISDICTION

The judgment of the court of appeals (Pet. App. 16) was entered on August 21, 1989. The petition for a writ of certiorari was filed on October 19, 1989, and was granted on February 20, 1990. The judisdiction of this Court rests on 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on six counts of willfully failing to file income tax returns, in violation of 26 U.S.C. 7203; three counts of willfully attempting to evade income taxes, in viola-

tion of 26 U.S.C. 7201; and one count of knowingly making a false claim against the United States for income tax withheld, in violation of 18 U.S.C. 287. He was sentenced to imprisonment for a year and a day, placed on five years' probation, and ordered to pay the costs of the prosecution. The court of appeals affirmed. Pet. App. 1-15.

1. a. The evidence at trial showed that petitioner, a college graduate and a pilot for American Airlines, filed federal income tax returns for the years 1969 through 1979. Tr. 119-126, 1150-1151. Thereafter, he engaged in "tax protest" activity.[1] From 1980 to 1986, when his salary rose steadily from approximately $50,000 to $82,000 annually, petitioner did not file any tax return—other than a frivolous return for tax year 1982, for which he was assessed a $500 civil penalty but was not charged criminally. Tr. 125-129, 175-182. His gross income during that period far exceeded the statutory minimum necessary to trigger the filing requirement, which ranged from $3300 to approximately $3600. Tr. 708, 713, 715, 718, 719-721. Based on this course of conduct, petitioner was convicted of willfully failing to file a tax return for

[1] In several prior years, petitioner sought to avoid taxes in a different manner. In 1978, guided by materials distributed by a group called E.S. Publishers, petitioner established a "family trust." He assigned to that trust a portion of his income from American Airlines, took a deduction for that assignment on his personal tax returns for the years 1978 and 1979, and paid personal expenses out of the trust. As a result, his returns for 1978 and 1979 substantially understated his tax liability. J.A. 46-47; Tr. 263-274, 693-702, 1158-1164. Following an audit, the IRS disallowed his deductions for the "family trust." Tr. 235-290. Petitioner's convictions arose out of subsequent tax years and are not based on his use of the "family trust" or the resulting understatement of his tax liability for 1978 and 1979. In 1980, petitioner became a member of the Mid-America Commodities Barter Association, an organization that furnished members a way to have checks received and payments made on their behalf without being traced. Tr. 333-335, 532-555, 1120, 1138-1139, 1191-1193.

the years 1980, 1981, and 1983 through 1986, in violation of 26 U.S.C. 7203 (Counts 2, 4, and 7-10).

Petitioner also filed frivolous W-4 forms claiming an increasing number of withholding allowances, eventually claiming 60 by mid-1980. On W-4 forms filed between 1981 and 1984, he claimed that he was completely exempt from taxation. As a result, for the years 1980, 1981, and 1983, American Airlines withheld substantially less than the amount of tax petitioner owed. Based on the false W-4 forms and other affirmative steps petitioner took to avoid paying taxes, petitioner was convicted of willfully attempting to evade his income taxes for those three years, in violation of 26 U.S.C. 7201 (Counts 1, 3, and 6).[2] For the year 1982, American Airlines withheld approximately $620 more than the estimated amount of petitioner's tax liability. However, petitioner filed a claim for a refund of the entire $16,080 the company withheld. That claim was the basis for petitioner's conviction for presenting a claim to an agency of the United States, knowing the claim to be false and fraudulent, in violation of 18 U.S.C. 287 (Count 5). Pet. App. 2.

b. The evidence showed that as part of his pattern of opposition to the tax system, petitioner filed a number of civil suits and attended trials of other tax protesters.

First, in March 1982, petitioner and another American Airlines employee sued the company and three of its employees to challenge the withholding of federal taxes from their pay. On October 29, 1982, the district court dismissed the complaint, holding that the withholding was proper and observing that the plaintiffs' objections appeared to be frivolous. J.A. 16-20.

Second, petitioner brought a civil action against the IRS in the Tax Court in April 1982, claiming that he was not a "taxpayer" or a "person" for purposes of the Internal Revenue Code, that his salary from American Air-

[2] From 1984 on, American Airlines withheld sufficient amounts to cover petitioner's tax liability. Petitioner nevertheless persisted in his refusal to file tax returns. Tr. 170, 339-356.

lines did not constitute "wages" within the meaning of the Code, that he did not receive taxable "income" when he exchanged his labor for wages, that his wages were not taxable because he did not work for an "employer," that he was not subject to income tax because he was a sovereign individual, that the income tax does not apply to individuals because the word "direct" does not appear in the Sixteenth Amendment to the Constitution, and that the tax laws are ineffective because the Sixteenth Amendment contains no enforcement clause. During the trial of that case in March 1984, the court specifically told petitioner that each of those arguments was frivolous, and it noted that several of the arguments, including that wages are not income, had been consistently rejected in cases across the country. J.A. 21-31.

Third, a federal district court issued an opinion in March 1984 in a separate civil action brought by petitioner and four other persons alleging that wages are not taxable under the Sixteenth Amendment because the value of their labor is the same as the payment they receive for it, and that the withholding of taxes from their wages and payment of those taxes to the government violated the Sixteenth Amendment. J.A. 31-32, 35-36. The district court dismissed the action explaining, inter alia, that the plaintiffs' argument that wages are not income "has repeatedly been held to be without merit." J.A. 35. See *Schaut* v. *United States*, 585 F. Supp. 137, 139 (N.D. Ill. 1984).

Finally, in a suit against various federal officials, petitioner again argued that wages are not taxable income and that the withholding of taxes amounts to an unconstitutional taking of property. The district court dismissed the action on June 16, 1986. Noting that "[t]he constitutionality of the income tax laws enacted pursuant to the Sixteenth Amendment has long been established," the court found petitioner's positions frivolous and imposed sanctions totalling $11,500 against him for bringing the action in bad faith. Pet. App. 2a; J.A. 37-38. In

imposing sanctions, the court observed that "[t]here is no good faith basis for [petitioner's] arguments" and that petitioner had unsuccessfully raised essentially the same arguments in the previous civil action that the district court had decided in March 1984. J.A. 38-39. On appeal, the Seventh Circuit found petitioner's abuse of the system to be "egregious" and fined petitioner $1500 for taking a frivolous appeal. *Cheek* v. *Doe*, 828 F.2d 395 (7th Cir.), cert. denied, 484 U.S. 955 (1987).[3]

The evidence also showed that petitioner had attended at least two criminal trials of other persons charged with similar tax offenses, one in December 1982 and one thereafter. Pet. App. 2a; Tr. 465-470, 494-496, 1367-1368. Petitioner admitted on cross-examination in this case that at the first of those trials, "[b]ased on the Department of Justice's interpretation, I learned that I probably should file an income tax [*sic*]." Tr. 1367. Petitioner further admitted that he heard the jury instructions at the second of those trials, but when asked whether he had "learned what the law was" as a result, he stated: "No, I did not. I learned what Judge Carroll considered the law to be." *Ibid.*

c. Two attorneys who appeared as witnesses for petitioner testified that they had discussed the law of taxation with him. Tr. 959-996, 997-1047, 1058-1103. The first attorney testified that beginning in 1981, she had discussed constitutional issues of taxation with petitioner and knew he was not filing tax returns. Tr. 971-976, 979-980. She also told petitioner that Acts of Congress are binding until they are held unconstitutional by a court and warned him that his conduct could "get him into trouble" and that he could "face a criminal prosecu-

[3] Among the arguments that the Seventh Circuit found frivolous were that wages are not income, that the Sixteenth Amendment was improperly ratified, and that income taxes are unconstitutional takings. 828 F.2d at 398.

tion." Tr. 971, 977-978.[4] The other attorney testified that, during 1980 or 1981, he told petitioner that the courts had rejected as frivolous the claim that wages are not income, Tr. 1034-1035, 1037,[5] and that although the Fifth Amendment provides protection against compelled self-incrimination, "the federal government nevertheless requires the filing of an income tax return." Tr. 1039. He also told petitioner that a person could attack the system from a constitutional standpoint by suing for a refund or damages after the money has been withheld, Tr. 1018, or by putting himself "at risk of criminal prosecution." Tr. 1022.

d. Petitioner admitted during his testimony at trial that he did not file a personal income tax return for the years 1980 through 1986. Tr. 1380. He did not dispute the government's evidence concerning the amount of his gross income from American Airlines during those years or the tax owing on that amount of income under the Internal Revenue Code. And he did not question the obligation under the Code for a person receiving that amount of income to file a return. Petitioner's defense was that his income could not lawfully be taxed. He contended that his wages from American Airlines did not constitute income subject to taxation under the Sixteenth Amendment and the Internal Revenue Code because an exchange of labor for wages does not result in a taxable gain or profit; that a tax on compensation for services is a "direct" tax that is not authorized by the Sixteenth Amendment; that the income tax is "voluntary" for white persons under the Constitution as originally adopted, and he

[4] Petitioner told the attorney about cases of which he was aware in which individuals were prosecuted for willful failure to file tax returns, tax evasion, and filing false W-4 forms. Tr. 982-983. Petitioner also told her of the statement by the judge in his suit against American Airlines that his case was frivolous. Tr. 981-982.

[5] See also Tr. 1084 (attorney told petitioner on several occasions that petitioner's view of the law was inconsistent with interpretations by district and appellate courts).

therefore was not required to pay tax on his wages because he had "withdrawn" from the tax system and was no longer a "taxpayer"; and that to tax income other than on a voluntary basis would amount to involuntary servitude, in violation of the Constitution. See generally Tr. 1206-1243, 1273, 1278, 1304-1367, 1380-1407.

On cross-examination, petitioner acknowledged his familiarity with this Court's decision in *Brushaber* v. *Union Pacific R.R.*, 240 U.S. 1 (1916), which held that the income tax provisions of the Tariff Act of 1913, ch. 16, 38 Stat. 166, were consistent with the Sixteenth Amendment. See Tr. 1306-1308, 1353-1355, 1403-1406. The *Brushaber* Court noted (240 U.S. at 17) that Congress's power to tax income from "professions, trades, employments, or vocations" had been recognized in *Pollock* v. *Farmers' Loan & Trust Co.*, 158 U.S. 601, 635, 637 (1895), even before the adoption of the Sixteenth Amendment. Petitioner also acknowledged familiarity with *Lucas* v. *Earl*, 281 U.S. 111 (1930). In that case, the Court recognized that an individual's salary and fees were income subject to taxation under the Revenue Act of 1918, ch. 18, 40 Stat. 1057, which "impose[d] a tax upon the net income of every individual including 'income derived from salaries, wages, or compensation for personal service . . . of whatever kind and in whatever form paid.'" 281 U.S. at 114. See Tr. 1383, 1406-1408. Petitioner sought to distinguish *Lucas* v. *Earl* on the ground that the taxpayer there was a lawyer, who, in petitioner's view, could constitutionally be subjected to the income tax only because he received a license from the government. Tr. 1406-1408.[6] Finally, petitioner admitted on cross-examination that the judges in his civil actions challenging the income tax laws had told him his positions were frivolous, but he testified that he did not "believe" those judges. Tr. 1368-1369.

[6] Although the point was not brought out on cross-examination, petitioner, as an airline pilot, of course also must have a license from the government. 49 U.S.C. App. 1422.

2. a. At the close of the evidence, the district court instructed the jury that the term "willfully," as used in 26 U.S.C. 7201 and 7203, means "a voluntary, intentional violation of a known legal duty, as distinguished from a violation which is accidental, inadvertent or negligent." Pet. App. 20; J.A. 78.[7] The court further explained (Pet. App. 3, 20; J.A. 74-75):

> An objectively reasonable good faith misunderstanding of the law negates willfulness. An objectively reasonable good faith misreading of the law may be based upon the defendant's own legal research or an attorney's advice. Good faith reliance does not require that the defendant's research come to a correct determination of the law, nor that the attorney's advice be correct. It requires that the defendant honestly and reasonably believe his research or the advice, and believe that it is correct and relies upon it.
>
> Disagreement with the law does not constitute a good faith misunderstanding of the law because it is the duty of all persons to obey the law whether or not they agree with it. Persistent refusal to acknowledge the law does not constitute a good faith misunderstanding of the law.

The district court also gave an instruction on petitioner's theory of his defense. The court drafted that instruction for petitioner, who represented himself at trial. The instruction described petitioner's theory to be that his wages from American Airlines did not constitute

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[7] The False Claims Act, 18 U.S.C. 287, which formed the basis for petitioner's conviction for seeking a refund of his 1982 taxes, does not contain the word "willfully." It proscribes the submission of a claim to a government agency "knowing" the claim to be false or fraudulent. The jury was instructed that it must find that petitioner "knew" the claim was false, J.A. 79, and that the term "knowingly" means that "the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake, or accident." J.A. 74. Petitioner does not appear to challenge the instructions or his conviction on that count.

income under the Internal Revenue Code, and that, because he honestly and reasonably believed he was not required to pay income taxes, he was not required to file tax returns. Pet. App. 3, 21; J.A. 80-81. The instruction also noted petitioner's contention "that he has been attempting to test the constitutionality of the income tax laws as well as the applicability of the tax laws to him and he cannot do so by filing tax returns." Pet. App. 21; J.A. 80.

b. The jury began its deliberations on the morning of November 10, 1988. At 3 p.m. that afternoon, it sent out a note requesting a transcript of the testimony in which petitioner discussed his beliefs. The court denied that request. Pet. App. 3. At 4:15 p.m., the jury sent out a second note, which stated in part (*id.* at 23):

> We have a basic disagreement between some of us as to if [petitioner] honestly & reascnably believed that he was not required to pay income taxes.
>
> We have struggled with this point for part of the morning & the entire afternoon with no movement.
>
> Page 32 discusses good faith misunderstanding & disagreement. Is there any additional clarification you can give us on this point?
>
> Page 53 [the theory of defense instruction] is the one we cannot get by as to his belief.

During the ensuing colloquy with the court, the government pointed out that the court had omitted instructions that a person's opinion that the tax laws violate his constitutional rights and disagreement with the government's tax collection do not constitute good faith misunderstandings of the law. The court's response to the jury's note included those instructions. Pet. App. 4; J.A. 86. At 7:10 p.m., the jury sent the court another note, which stated: "We are divided on the issue as to if [petitioner] honestly & reasonably believed that he was not required to pay income tax. We feel that no amount of deliberation will reach a unanimous decision." Pet. App. 24-25.

c. The jury returned on November 12, and the government asked the court to clarify its instructions before the jury resumed its deliberations. In response, the court gave the jury a second supplemental instruction. That instruction stated, *inter alia*, that "[a]n honest but unreasonable belief is not a defense and does not negate willfulness," and that "[a]dvice or research resulting in the conclusion that wages of a privately employed person are not income or that the tax laws are unconstitutional is not objectively reasonable and cannot serve as the basis for a good faith misunderstanding of the law defense." Pet. App. 4, 25-26; J.A. 88. The court also repeated its instructions that disagreement with the law is not a defense, "because it is the duty of all persons to obey the law whether or not they agree with it," and that "[p]ersistent refusal to acknowledge the law does not constitute a good faith misunderstanding of the law." Pet. App. 26; J.A. 88. The jury deliberated for another 2-1/2 hours and then returned a verdict of guilty on all counts. Pet. App. 4-5.[8]

3. On appeal, petitioner contended that a good faith misunderstanding of the law need not be objectively rea-

[8] The jury submitted several notes that it wanted the court to read after the verdict was announced. Before reading the notes, the court polled the jury, and each juror affirmed that the guilty verdict was his or her own. Pet. App. 4-5. The court then read the notes. The first stated in part: "Some of our jurors wished to express their personal opinions. These opinions are not meant to affect in any way their verdict of guilty. These opinions are forwarded as a complaint against the narrow & hard expression under the constraints of the law." *Id.* at 27. The second note, from one of the jurors, stated: "I feel * * * [petitioner] is a reasonable person and sincerely believes in his cause. * * * I honestly believe he believes so deeply in his cause that he has risked everything for this cause and truly does not believe he is breaking the law." *Ibid.* The last note, from another juror, contained two statements. The first read: "'Honest and Sincere in His Cause'—He is *Guilty*." The second read: "Not 'Objectively Reasonable' He Is Guilty." *Ibid.* After reading these notes, the court polled the jury again, and no juror expressed disagreement with the verdict. *Id.* at 5-6.

sonable to negate willfulness. The court of appeals rejected petitioner's position, pointing out that it had "emphatically adhered to the 'objectively reasonable' standard." Pet. App. 6-7. In rejecting petitioner's separate claim that the district court had erred in reinstructing the jury, the court further held that "the beliefs that wages are not income and that the tax laws are unconstitutional are not objectively reasonable as a matter of law." *Id.* at 9.

The court of appeals also stated that a number of other arguments frequently raised by tax protesters are not objectively reasonable, including that the Sixteenth Amendment was improperly ratified; that the income tax violates the Takings Clause of the Fifth Amendment; that filing a tax return violates the Fifth Amendment privilege against compulsory self-incrimination; and that Federal Reserve Notes do not constitute cash or income. Pet. App. 9-10 n.2. Petitioner raised some of those arguments on appeal, as he had in the district court. Specifically, he argued on appeal: (1) that the income tax laws cannot be enforced to tax the compensation of a white Christian male (at least if he has not received a professional license from the State), because such an individual's citizenship does not derive from the Fourteenth Amendment and because he has inalienable rights under the constitution of his State that are protected by the Tenth Amendment; and (2) that the Sixteenth Amendment restricts the taxation of incomes to indirect taxes, and he had engaged in no "indirect taxable activity." For these reasons, petitioner argued, an income tax could be assessed against his compensation only on a "voluntary" basis, and any such basis was lacking here because he had renounced any voluntary use of the federal debt, denied all state-created franchises, and revoked or rescinded his Social Security numbers, past tax returns, and associated forms. See C.A. Br. 36-42; Reply Br. 15-16. The court of appeals dismissed petitioner's various legal objections to the income tax as "absurd." Pet. App. 10 n.2.

SUMMARY OF ARGUMENT

I. This case presents a question of statutory construction concerning the scope of the defense of ignorance or mistake of law that is encompassed by the term "willfully" under two criminal tax statutes, 26 U.S.C. 7201 and 7203. The district court instructed the jury that the term "willfully" means "a voluntary, intentional violation of a known legal duty." That is the very standard of willfulness that petitioner urges, and it is drawn verbatim from *United States* v. *Bishop*, 412 U.S. 346, 360 (1973), and *United States* v. *Pomponio*, 429 U.S. 10, 12 (1976), upon which petitioner relies. Petitioner objects to the district court's further instruction that an objectively reasonable and good faith misunderstanding of the law negates willfulness. But that instruction afforded petitioner added protection, because even if the jury found that he was aware of the legal duties imposed by the Internal Revenue Code, the jury nevertheless was required to acquit him if it found that he reasonably and in good faith concluded that there was some legal ground that excused him from performing those duties. It was entirely fair to place a limit of objective reasonableness on this extension of the defense of ignorance or mistake of law.

A. The text of 26 U.S.C. 7201 and 7203 cuts against a defense that gives dispositive effect to the defendant's subjective beliefs about the law. Those Sections make it an offense for a person "willfully" to evade a "tax imposed by this title" or fail to file a "return * * * required by this title." Because willfulness, as construed in *Bishop* and *Pomponio*, generally connotes an intentional violation of a "known legal duty," Sections 7201 and 7203, on their face, require only that the defendant know of the "tax imposed by [Title 26]" and the "return * * * required by [Title 26]." That was true here. Petitioner argues, however, that even where a person is aware of the duty under the Code to pay taxes on wages and to file tax returns, he is not guilty of an offense if he did

not subjectively "believe" in that view of the law, no matter how outlandish his belief. This extension of the defense of ignorance or mistake of law is not compelled by the term "willfully." Although a limited mistake of law defense may properly be implied under Sections 7201 and 7203, it should apply only where the defendant's "belief" that he need not comply with known statutory requirements was held in good faith *and* was objectively reasonable.

B. The "objectively reasonable" limitation on the defense of ignorance or mistake of law is supported by this Court's seminal decision under the criminal tax laws, *United States* v. *Murdock*, 290 U.S. 389 (1933). There, the Court explained that in a criminal statute, the term "willfully" generally means an act done without a "justifiable excuse"; without "ground for believing it is lawful"; "stubbornly, obstinately [or] perversely"; or in "careless disregard whether or not one has the right so to act." *Id.* at 394-395. Each of these formulations supports an objective limitation on the extent to which a subjective belief about the law will negate willfulness, and each aptly describes petitioner's conduct in this case.

Moreover, the Court held in *Murdock* that the Court should have submitted to the jury the particular defense at issue only because the law was uncertain at the time. The defendant's legal position therefore was not "so unreasonable and ill founded as to exhibit bad faith and establish willful wrongdoing." 290 U.S. at 396. The clear implication is that if the law had not been unsettled at the time of the defendant's conduct, the trial court would not have been required to submit the issue to the jury. In this case, because the text and judicial construction of the Internal Revenue Code and the Constitution conclusively refute petitioner's various legal theories, his adamant refusal to pay taxes and file returns is so "unreasonable and ill founded" that the district court was not required to submit to the jury the question of petitioner's good faith belief in those legal

theories. This conclusion is fully consistent with *Bishop*, *Pomponio*, and *Sansone* v. *United States*, 380 U.S. 343 (1965), which involved alleged good faith mistakes of fact, not law.

C. The approach we propose will preclude liability based on " 'innocent errors made despite the exercise of reasonable care' " and will "separate the purposeful tax violator from the well-meaning, but easily confused, mass of taxpayers." *United States* v. *Bishop*, 412 U.S. at 360-361, quoting *Spies* v. *United States*, 317 U.S. 492, 497 (1943). At the same time, it will "induce prompt and forthright fullfillment of every duty under the income tax law," *Spies* v. *United States*, 317 U.S. at 497, by discouraging individuals from clinging to frivolous views of the law in the hope of convincing a jury of their sincerity.

D. The legal objections to the tax system that petitioner advanced at trial do not satisfy the standard of "objective reasonableness." In fact, they are frivolous. Moreover, petitioner's objections are essentially beliefs that the income tax violates the Constitution. The courts have uniformly held that a belief that the Internal Revenue Code is unconstitutional does not negate the element of willfulness under the criminal tax statutes. That conclusion is supported by *Reynolds* v. *United States*, 98 U.S. 145, 166-167 (1878), and the public interest in discouraging defiance of duly enacted laws on the basis of a personalized finding of unconstitutionality.

E. Petitioner's submission that his violation of known legal duties should be excused, no matter how indefensible his subjective "belief," is also inconsistent with general principles of mens rea under the criminal law. Under those principles, a person acts "knowingly"—the level of culpability petitioner urges—if he is "aware" of the relevant circumstances (here, the requirements of the law). In other words, knowledge is a matter of *cognition*. By contrast, petitioner appears to use the term "belief" to refer to matters of personal faith and conviction, as demonstrated by his claim that the jury instructions in this

case violated the First Amendment by singling him out on the basis of his beliefs. As *Reynolds* v. *United States* holds, a person is not excused from liability for his conduct simply because it was motivated by a subjective belief in the justness or soundness of his cause.

II. A. Application of the "objectively reasonable" limitation here does not constitute retroactive expansion of a criminal statute in violation of the Due Process Clause. Petitioner was put on notice of this element of a mistake-of-law defense by *Murdock* and *United States* v. *Moore*, 627 F.2d 830, 833 (7th Cir. 1980), cert. denied, 450 U.S. 916 (1981). And because petitioner's objections boil down to the proposition that the Internal Revenue Code is unconstitutional, *Reynolds* v. *United States* established that his beliefs would not furnish a defense.

B. The jury instructions did not eliminate the element of mens rea under the criminal tax statutes, because they required a finding that petitioner intentionally violated a known legal duty. Nor was petitioner's right to have the jury decide his guilt or innocence violated by the instruction that his beliefs that wages are not income, and that the tax laws are unconstitutional, were not objectively reasonable. The latter belief is not a defense under the criminal tax statutes. Moreover, the question whether a particular belief about the law is objectively reasonable is essentially a question of law for the court. And even if that question should be submitted to the jury in a close case, it was not necessary to do so here, because petitioner's beliefs about the law had been uniformly rejected by the courts and no reasonable jury could have found in his favor on the basis of those beliefs.

ARGUMENT

I. A TAXPAYER ACTS "WILLFULLY" IF HE IS AWARE OF THE REQUIREMENTS OF THE TAX CODE BUT REFUSES TO ACCEPT THEM BASED ON A THEORY THAT IS OBJECTIVELY UNREASONABLE OR A BELIEF THAT THE REQUIREMENTS ARE UNCONSTITUTIONAL.

This case presents a question of statutory construction concerning the content of the term "willfully" in two criminal tax statutes, 26 U.S.C. 7201 and 7203. In particular, it concerns the scope of the defense of ignorance or mistake of law that may appropriately be read into that statutory term. Our submission is this: Under *United States* v. *Bishop*, 412 U.S. 346, 360 (1973), and *United States* v. *Pomponio*, 429 U.S. 10, 12 (1976), the element of willfulness in the federal criminal tax statutes generally requires proof that the defendant intentionally violated a known legal duty. As a result, when a defendant is unaware of the duties the tax laws impose on him, he does not act willfully if he fails to file a return or underpays his taxes. When, however, the defendant is aware of the pertinent requirements of the tax laws, but defends his failure to comply with them by asserting the belief that those requirements may not lawfully be applied to him, he may not avoid conviction unless his belief is objectively reasonable. He also may not avoid conviction on the basis of an asserted belief that the tax laws are unconstitutional.

Petitioner's basic submission (Br. 13, 16, 20, 23, 25) is that when the district court instructed the jury that his assertedly good faith misreading of the law must be "objectively reasonable," it altogether deprived him of a valid defense of "ignorance of the law", or "mistake of law." Petitioner's actions, however, were quite different from the sort of conduct for which that defense has been fashioned, based on considerations of fair notice and a concern that certain errors of law are not blameworthy.

Simply put, petitioner did not act in "ignorance" of the law or make a "mistake" about his obligations under the law. He unquestionably knew that the Internal Revenue Code, as written, requires a person having his income to file a return and pay taxes. That much is established by the fact that petitioner filed returns and paid taxes on his income from American Airlines (and prior employers) for ten years before he commenced the course of conduct that led to the convictions he now asks the Court to overturn. Any conceivable doubt on that score is dispelled by the fact that petitioner filed a number of lawsuits challenging the income tax laws, and the withholding of taxes from his income, on many of the same legal theories he subsequently presented in his defense in this criminal prosecution, and in each instance the court informed petitioner that his legal positions were frivolous. It follows that petitioner's actions did not stem from "ignorance" or "mistake." Knowing full well what was expected of him, petitioner intentionally and obdurately refused to perform the most basic duties of a citizen under the tax laws—duties that are acknowledged and respected by virtually all of the millions of wage earners in this country. Petitioner's actions were therefore far removed from the sort of innocent or blameless conduct for which the defense of ignorance or mistake of law is properly reserved.[9]

Petitioner's complaints about the jury instructions in this case also ignore the central instruction on the question of willfulness. The district court specifically instructed the jury that the term "willfully" in 26 U.S.C. 7201-7203 means "a voluntary, intentional violation of a known legal duty." Pet. App. 20; J.A. 78. That is the very standard of willfulness that petitioner urges (Br.

[9] Petitioner now attempts (Br. 4-5, 32, 39) to portray himself as a gullible and misguided victim caught up in the tax protest movement. That was not his defense in the courts below, where he argued that the tax laws could not constitutionally be applied to him. Petitioner has abandoned those arguments in this Court.

18-19), drawn directly from language in *United States* v. *Bishop*, 412 U.S. at 360, and *United States* v. *Pomponio*, 429 U.S. at 12.[10]

The district court further instructed the jury that "[a]n objectively reasonable good faith misunderstanding of the law negates willfulness," and that such a good faith "misreading of the law" may be based on the defendant's own legal research or the advice of an attorney, as long as the defendant "honestly and reasonably believe[s] his research or the advice." Pet. App. 20; J.A. 74-75. Petitioner objects to the requirement of objective reasonableness in this additional instruction. He fails to appreciate, however, that the instruction added to, rather than detracting from, the protections afforded by the basic willfulness instruction he endorses. Thus, under the court's instructions, the jury was required to acquit petitioner if it found that he was not aware of the legal duty under the Internal Revenue Code to pay taxes and file tax returns. And even if the jury found that petitioner *was* aware of the requirements of the Code, it could not conclude that he acted willfully if it found that he reasonably and in good faith concluded that there was some legal ground that excused him from having to comply with those requirements.

Contrary to petitioner's contention, there is nothing unfair about the requirement of objective reasonableness in the latter instruction, because it imposes a sound limitation on the extent to which a taxpayer may, with impunity, act in knowing contravention of the law as written or as construed by the responsible agency or

[10] In the court of appeals, petitioner argued (C.A. Br. 25-29) that the district court erred in its supplemental instructions to the jury because, inter alia, the court did not repeat the instruction referring to an "intentional violation of a known legal duty," and the jury therefore might have been misled into believing that it was not required to make that finding in order to convict him. The court of appeals rejected petitioner's objection to the manner of reinstruction, Pet. App. 7-12, and he does not renew that claim here.

the courts. As we shall show, such a limitation is supported by the text and purposes of the criminal tax laws, by this Court's decisions construing those laws, and by general principles of criminal culpability.[11]

[11] Petitioner errs in contending (Br. 19-21) that the jury instructions approved by the Seventh Circuit in this case would be rejected by ten other courts of appeals. The Second Circuit has stated that an instruction requiring objective reasonableness would be appropriate. *United States* v. *Schiff*, 801 F.2d 108, 112 (1986), cert. denied, 480 U.S. 945 (1987). The Third Circuit recently observed that it had not yet resolved the validity of such an instruction, and it expressly left that question open. *United States* v. *Connor*, No. 89-3614 (Mar. 21, 1990), slip op. 8. The Ninth Circuit likewise has indicated that it has not yet definitively resolved that question. Compare *Cooley* v. *United States*, 501 F.2d 1249, 1253 n.4 (1974), cert. denied, 419 U.S. 1123 (1975), with *United States* v. *Mueller*, 778 F.2d 539, 541 (1985), and *United States* v. *Aguilar*, 883 F.2d 662, 674-675 & nn. 5, 6 (1989). In *Yarbrough* v. *United States*, 230 F.2d 56, 61 (1956), cert. denied, 351 U.S. 969 (1956), cited by petitioner (Br. 20), the Fourth Circuit simply stated that "ignorance of the law" can constitute a defense under the criminal tax laws, a position that is fully consistent with the district court's instructions in this case and our submission herein. In *Battjes* v. *United States*, 172 F.2d 1, 4 (1949), cited by petitioner (Br. 20), the issue concerned an instruction that the defendant was presumed to know the law, and the Sixth Circuit did not specifically address the issue presented here; more recently, the Sixth Circuit indicated that an instruction concerning a "known legal duty" is sufficient. *United States* v. *Sassak*, 881 F.2d 276, 279-280 (1989). Thus, there is no concluded view in the majority of circuits that conflicts with our submission here.

The reasoning in the decisions of other courts of appeals that petitioner cites does not lend much persuasive force to those conflicting circuit precedents. For the most part, those decisions simply rely on the *Bishop* and *Pomponio* formulation of an "intentional violation of a known legal duty," which was in fact followed in this case. Those decisions also do not address the arguments presented herein or explain how the purely subjective approach can sensibly be applied where, as here, the defendant is fully aware of the legal duties imposed by the relevant statutory provisions.

A. The Objective Reasonableness Requirement Is Consistent With The Text Of 26 U.S.C. 7201 And 7203

Because this case presents a question of statutory construction—the scope of the defense of ignorance or mistake of law under the criminal tax laws—it is necessary to begin with the text of the relevant statutory provisions, 26 U.S.C. 7201 and 7203. See *United States* v. *Yermian*, 468 U.S. 63, 68 (1984). Section 7201 provides criminal sanctions for a person who "willfully attempts in any manner to evade or defeat any tax imposed by this title [Title 26 of the United States Code] or the payment thereof." Section 7203 provides criminal sanctions for any person who is "required by this title or by regulations made under authority thereof to make a return * * * [and] who willfully fails * * * [to] make such return."

Sections 7201 and 7203 do not expressly state whether a defendant must be aware of the requirements of Title 26 (or implementing regulations) that he pay taxes or file a return. Nor does either Section state that ignorance of those requirements is a defense. As a result, any such refinements on the nature of the offense under 26 U.S.C. 7201 and 7203 must be derived from the word "willfully" in each Section.

The tax statutes do not define "willfully," and the legislative history of those statutes is not instructive as to its meaning. *United States* v. *Bishop*, 412 U.S. at 356; *Spies* v. *United States*, 317 U.S. 492, 495 (1943). Moreover, this Court has repeatedly stated that the word "willful" is "a word of many meanings, its construction often being influenced by its context." *Spies* v. *United States*, 317 U.S. at 497; *Screws* v. *United States*, 325 U.S. 91, 101 (1945) (plurality opinion). It therefore has fallen to this Court to give content to the term "willfully" in different contexts, taking into account the underlying policies of the criminal tax statutes that are implicated in the particular setting.

The Court has stated that the term "willfully" under the criminal tax statutes "generally connotes a voluntary,

intentional violation of a known legal duty." *United States* v. *Bishop*, 412 U.S. at 360; *United States* v. *Pomponio*, 429 U.S. at 12. Under this formulation, it would appear to be sufficient to establish a criminal violation in a case such as this if the defendant was aware of the requirements imposed by the Internal Revenue Code to pay taxes and file tax returns. That conclusion is consistent with the text of Sections 7201 and 7203. The language of the two statutes permits the construction that the knowledge component of the term "willfully" applies to whether a tax is "imposed by this title" or filing a return is "required by this title or by regulations made under authority thereof." This construction of the statute is sufficiently embodied in jury instructions that require the government to prove that the defendant was aware of the duties imposed by the basic requirements of the Code. If the defendant is not aware of those requirements, then ignorance of the law is, to that extent, a defense. As we have explained, the instructions in this case were consistent with such a construction of 26 U.S.C. 7201 and 7203, because they defined willfulness as an "intentional violation of a known legal duty."

Petitioner's submission goes much further, however. He argues that even where a person is aware of the relevant statutory provisions that impose legal duties (or of administrative or judicial interpretations of those provisions), he is not guilty of an offense if he does not subjectively "believe" that the law is or should be as stated in the statutory text or authoritative interpretations of that text. That defense—which is not really one of "ignorance" or "mistake" of law—has a far broader reach than is suggested by the text of 26 U.S.C. 7201 and 7203 and by this Court's statements in *Bishop* and *Pomponio* concerning what the term "willfully" generally means under those statutes. The question presented here is the extent (if any) to which this further defense should be read into the criminal tax statutes by implication. In our view, this Court's decisions and

the policies of the criminal tax statutes do permit some accommodation of this implied defense, but only when subject to appropriate limitations—namely, that the defendant's "belief" that he need not comply with applicable statutory requirements was held in good faith and was objectively reasonable.[12]

B. This Court's Decisions Support The Use Of An Objective Standard In Assessing A Defendant's Refusal To Acknowledge His Duties Under The Tax Code

1. The Court's seminal decision construing the term "willfully" under the criminal tax laws is *United States* v. *Murdock*, 290 U.S. 389 (1933). The taxpayer in *Murdock* was charged with willfully failing to supply information, in violation of Section 1114(a) of the Revenue Act of 1926, ch. 27, 44 Stat. 116, the predecessor to 26 U.S.C. 7203. The trial court instructed the jury of its view that the government had sustained the burden of establishing the defendant's guilt, and it refused to give the following instruction requested by the defendant (290 U.S. at 393):

> If you believe that the reasons stated by the defendant in his refusal to answer questions were given in good faith and based upon his actual belief, you should consider that in determining whether or not his refusal to answer the questions was wilful.

The Court held that, in the circumstances presented, the trial court should have given this instruction and should

[12] In considering the scope of this implied extension of the defense of ignorance or mistake of law under the criminal tax statutes, it is important to keep in mind that any such defense is an exception to the deeply rooted principle that ignorance or mistake of law ordinarily is not a defense to a criminal prosecution. See *United States* v. *Barlow*, 32 U.S. (7 Pet.) 404, 411 (1833); *Armour Packing Co.* v. *United States*, 209 U.S. 56, 85-86 (1908); *Lambert* v. *California*, 355 U.S. 225, 228 (1957); *United States* v. *International Minerals & Chemical Corp.*, 402 U.S. 558, 562-563 (1971).

not have informed the jury of its view that the evidence established willfulness. Both the Court's discussion of the meaning of the term "willfully" and the Court's application of that term strongly support the conclusion that the rule of objective reasonableness properly limits the extent to which a taxpayer's assertedly good faith "belief" about his obligations under the tax laws negates the element of willfulness.

The Court first concluded in *Murdock* that the term "willfully," as used in criminal statutes, means more than "voluntarily" (290 U.S. at 394-395 (citations omitted)):

> The word [willfully] often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental. But when used in a criminal statute it generally means an act done with a bad purpose; without justifiable excuse; stubbornly, obstinately, perversely. The word is also employed to characterize a thing done without ground for believing it is lawful, or conduct marked by careless disregard whether or not one has the right so to act.

This elaboration upon the concept of willfulness has both subjective and objective components, and an analysis of the illustrative formulations it contains shows why *Murdock* is at odds with the position petitioner advocates.[13]

First, the requirement that the "excuse" proffered by a defendant for his illegal act must be "justifiable" suggests that the defendant may not rely on any belief, no matter how unreasonable or indefensible. Accord *Potter*

[13] Petitioner argues (Br. 17 & n.8) that the quoted passage from *Murdock* was not intended to reflect the Court's construction of the term "willfully," as used in the Revenue Act of 1926, but was intended as a list of alternative constructions of the term that the Court did *not* mean to apply to the Revenue Act. The context of the discussion rebuts that claim, as does a subsequent decision in which the Court made it clear that the quoted passage was, indeed, intended as part of the Court's construction of the Revenue Act. See *Trans World Airlines, Inc.* v. *Thurston*, 469 U.S. 111, 127 (1985).

v. *United States*, 155 U.S. 438, 446 (1894); *Felton* v. *United States*, 96 U.S. 699, 702 (1877) (both cited by the Court in *Murdock*). Second, the Court did not state that a willful act is a thing done without actually "believing" it to be lawful; the Court stated that a willful act is a thing done without "*ground* for believing" it to be lawful, which suggests that the defendant's subjective belief must have at least some concrete basis in extrinsic circumstances. Third, the phrase "stubbornly" obstinately [or] perversely" aptly describes petitioner's course of conduct in this case, which he pursued in knowing disregard of the requirements of the Code. Fourth, *Murdock*'s standard of "careless disregard" for whether the laws afforded the defendant the right to act as he did supports the recognition here of some objective limitation on the extent to which petitioner may be excused for defying requirements in the tax laws of which he was fully aware. See 290 U.S. at 394-395.[14]

The Court's disposition of the defendant's claim in *Murdock* lends further support to the court of appeals' disposition of petitioner's claim in this case. The *Murdock* Court concluded that the district court should have given the instruction requested by the defendant—namely, that if the jury found his reasons for refusing to answer were given in good faith and based upon his actual belief, the jury should "consider that in determining whether or not his refusal to answer the questions was wilful." 290 U.S. at 393. By the same token, the Court concluded that the trial court should not have instructed the jury that in the court's view the government had established willfulness. The Court explained that, although an intervening ruling made clear that the defendant did not have a right to withhold information based on his privilege against compelled self-incrimination, he reasonably could have believed otherwise at the time. For that reason, the Court concluded, the trial court should not have told the jury that the defendant's assertion of the privilege "was so unreasonable and ill founded as to exhibit bad faith and establish willful wrongdoing." 290 U.S. at 396.

[14] The references in *Murdock* to a "bad purpose" or "evil motive" (290 U.S. at 394, 395) simply refer to a specific intent to violate the law—generally, an intentional violation of a known legal duty. *United States* v. *Pomponio*, 429 U.S. 10, 11-12 (1976).

The clear implication of this explanation is that if the Fifth Amendment question had *not* remained open at the time the defendant refused to answer, the trial court would *not* have been required to give the instruction requested by the defendant concerning his asserted good faith belief in his right to assert the privilege. Because an assertion of the privilege in those circumstances would be "so unreasonable and ill founded as to exhibit bad faith and establish willful wrongdoing," the trial court would have been justified in declining to submit to the jury the issue of the defendant's good faith and actual belief in his right to do so. That would have been especially so if the defendant knew the state of the law. See *Browder* v. *United States*, 312 U.S. 335, 341 (1941) (characterizing *Murdock* as a case involving lack of willfulness because the defendant had a "reasonable" fear of self-incrimination based on uncertainty in the law at the time).[15]

In this case, because the text and judicial construction of the Internal Revenue Code and the Constitution conclusively refute the view that wages are not income, and because the courts have uniformly found petitioner's other constitutional objections to the income tax to be frivolous, his adamant refusal to pay taxes and file returns was wholly "unreasonable and ill founded" and therefore "willful" under *Murdock*.[16] The district court

[15] Cf. *Screws* v. *United States*, 325 U.S. at 104-105 (plurality opinion) (willfulness established under predecessor to 18 U.S.C. 242 when defendant acts in open defiance or reckless disregard of constitutional rights that have been made specific and definite).

[16] The instruction that the Court held should have been given in *Murdock* did not state that the jury must acquit the defendant if it found his reasons for refusing to supply information were given in

therefore was not required by *Murdock* to instruct the jury that it must acquit petitioner if it found that he nevertheless subjectively believed that wages are not income or that the Internal Revenue Code is unconstitutional on this or other grounds. It follows that the district court did not err in instructing the jury that those beliefs are "not objectively reasonable and cannot serve as the basis for a good faith misunderstanding of the law defense." Pet. App. 4, 25-26; J.A. 88.

2. Petitioner relies (Br. 17-19) on this Court's decisions in *Sansone* v. *United States*, 380 U.S. 343 (1965); *United States* v. *Bishop*, 412 U.S. 346 (1973); and *United States* v. *Pomponio*, 429 U.S. 10 (1976). But those decisions do not suggest that objective reasonableness has no role to play in the defense of mistake or ignorance of the law under the criminal tax statutes. Rather, in *Sansone*, *Bishop*, and *Pomponio*, the Court construed the term "willfully" in the context of alleged good faith mistakes of fact, not law. In none of those three cases did the Court directly address the issue of the role of the reasonableness test as applied in the context of a mistake of law defense.

To be sure, in *Bishop* the Court discussed the general principles underlying the willfulness requirement in the criminal tax statutes, but its discussion supports our construction of the term, not petitioner's. The Court explained that "[i]n our complex tax system, uncertainty often arises even among taxpayers who earnestly wish to follow the law," and that "'[i]t is not the purpose of the [criminal tax] law to penalize frank difference

good faith and based upon his actual belief. The instruction stated only that the jury should "consider" its finding of good faith and actual belief in determining whether the defendant's refusal was willful. 290 U.S. at 393. *A fortiori*, *Murdock* does not suggest that a jury must be instructed to give dispositive effect to a defendant's claimed good faith belief where, as here, the state of the law regarding an individual's obligation to pay income tax on wages and to file returns as required by the Internal Revenue Code was not at all unsettled at the time the defendant acted.

of opinion or innocent errors made despite the exercise of reasonable care.'" 412 U.S. at 360-362, quoting *Spies* v. *United States*, 317 U.S. at 496. The reference to "reasonable care" suggests the propriety of objective reasonableness as a limitation on any "mistake of law" defense. Moreover, there is nothing in the Court's discussion that is inconsistent with the existence of a reasonableness restriction on the defense of mistake or ignorance of the law where, as here, the defendant knew of the requirements of the Internal Revenue Code (and decisions arising under it) but simply refused to accept the explicit terms of the Code, authoritative constructions of the Code, and the constitutionality of its most basic provisions.[17]

C. The Policies Of The Criminal Tax Statutes Support A Limitation Of Objective Reasonableness

The jury instructions given by the district court in this case also are supported by the policies of the criminal tax laws and the *mens rea* requirement in those laws. Congress has recognized the practical reality that "the [tax] law is complicated, accounting treatment of various items raises problems of great complexity, and innocent errors are numerous, as appears from the number who make overpayments." *Spies* v. *United States*, 317 U.S. at 496. Accordingly, "[i]t is not the purpose of the law to penalize frank difference of opinion or innocent errors made despite the exercise of reasonable care." *Ibid.* That policy was reiterated in *United States* v. *Bishop*, 412 U.S. at 360-361, where the Court stated that its

[17] Elsewhere in *Bishop*, the Court stated that "[t]he requirement of an offense committed 'willfully' is not met * * * if a taxpayer has relied in good faith on a prior decision of this Court." 412 U.S. at 361. Such reliance would establish that a mistake of law was objectively reasonable. The Court's reference to that point further suggests that objective reasonableness does indeed have an important role to play in determining the availability of the mistake-of-law defense.

"consistent interpretation of the word 'willfully' to require an element of *mens rea* implements the pervasive intent of Congress to construct penalties that separate the purposeful tax violator from the well-meaning, but easily confused, mass of taxpayers." There is no question, therefore, that an innocent or negligent oversight is not to be equated with willfulness. See, *e.g.*, *United States* v. *Aitken*, 755 F.2d 188, 191 (1st Cir. 1985).

The policies underlying the tax laws do not, however, suggest that the willfulness standard should be interpreted to shelter an individual who is aware of the requirements of the tax laws but seeks to justify disobedience by resorting to claimed beliefs that are unreasonable or frivolous. An individual who is aware of the requirements of the tax laws, such as the requirement to pay taxes on his wages, but seeks to exempt himself through reliance on some frivolous proposition is not a victim of the complexity of the tax laws when he is punished for his unlawful conduct. Nor can his violation be characterized as an "innocent error[] made despite the exercise of reasonable care." *Spies* v. *United States*, 317 U.S. at 496. Yet, the purely subjective approach to the question of willfulness advocated by petitioner would allow the jury to acquit that person if it believed that he was convinced of the correctness of the proposition.

Such a result would be inconsistent with the objectives of the system of sanctions under the tax laws. Focusing exclusively on whether a person really believes in a legal theory, regardless of how unreasonable that theory may be, would not "induce prompt and forthright fulfillment of every duty under the income tax law," *Spies* v. *United States*, 317 U.S. at 497, but instead would encourage disobedience of the law. A person who was aware of his duties under the tax laws and recognized that a particular theory for escaping taxes was contrary to the plain language of the tax statutes or judicial decisions—including decisions of this Court—could violate the law

without fear of criminal sanctions as long as he could convince a jury that he sincerely believed his theory for exempting himself from taxation.

The exclusively subjective test would be especially inappropriate in cases where, as here, a belief is objectively unreasonable because it is foreclosed by judicial decisions of which the defendant is aware. Where an individual clings to a theory despite his awareness of judicial decisions firmly rejecting that theory, he "knows" his duty, even if he refuses to believe that the courts are correct. Under the purely subjective test, however, the individual's refusal to acknowledge the correctness of well-settled legal rules would be sufficient to negate willfulness. Thus, the subjective test would invite individuals to abide by their own interpretations of the law without fear of criminal prosecution, thereby undermining the uniform enforcement of the tax laws.

D. Petitioner's Legal Arguments Do Not Constitute A Defense Under The Objective Reasonableness Standard

The court of appeals was clearly correct in holding that the legal arguments petitioner raised in his defense to the charges under 26 U.S.C. 7201 and 7203 were not objectively reasonable. In fact, as the courts in petitioner's various civil actions repeatedly informed him, those arguments are utterly frivolous. Moreover, it is well established that a belief that the tax laws are unconstitutional does not furnish a defense.

a. The courts have unanimously rejected the proposition that wages are not income and therefore are not subject to the federal income tax laws.[18] As a statutory

[18] See *Sullivan* v. *United States*, 788 F.2d 813, 815 (1st Cir. 1986); *Ficalora* v. *CIR*, 751 F.2d 85 (2d Cir. 1984), cert. denied, 471 U.S. 1005 (1985); *United States* v. *Connor*, No. 89-3614 (3d Cir. Mar. 21, 1990), slip op. 3-4; *United States* v. *Graham*, 758 F.2d 879, 886-887 (3d Cir.), cert. denied, 474 U.S. 901 (1985); *United States* v. *Burton*, 737 F.2d 439, 441 (5th Cir. 1984); *United States* v. *Koliboski*, 732

matter, this is evident from the face of the Internal Revenue Code, which defines "gross income" to mean "all income from whatever source derived, including (but not limited to)" "[c]ompensation for services, including fees, commissions, fringe benefits, and similar items." 26 U.S.C. 61(a)(1). Petitioner does not contend otherwise. Moreover, this Court's decisions in *Brushaber* v. *Union Pacific R.R.*, *supra*, *Pollock* v. *Farmers' Loan & Trust Co.*, *supra*, and *Lucas* v. *Earl*, *supra*, make clear that income from employment is subject to the income tax and that such taxation is authorized by the Constitution.

The courts have likewise uniformly rejected the additional objections to the income tax that were identified by the court below and that have been raised by petitioner and other tax protesters: (1) that the Sixteenth Amendment was improperly ratified and therefore never came into effect;[19] (2) that the income tax violates the Just Compensation Clause of the Fifth Amendment;[20] (3) that the tax laws are broadly unconstitutional in other respects;[21] (4) that filing a tax return necessarily violates

F.2d 1328, 1329 n.1 (7th Cir. 1984); *United States* v. *Richards*, 723 F.2d 646, 648 (8th Cir. 1983); *United States* v. *Buras*, 633 F.2d 1356, 1361 (9th Cir. 1980); *United States* v. *Lawson*, 670 F.2d 923, 925 (10th Cir. 1982); *Hyslep* v. *United States*, 765 F.2d 1083, 1084 (11th Cir. 1985).

[19] See *United States* v. *Sitka*, 845 F.2d 43, 45-47 (2d Cir.), cert. denied, 488 U.S. 827 (1988); *Knoblauch* v. *CIR*, 749 F.2d 200, 201-202 (5th Cir. 1984), cert. denied, 474 U.S. 830 (1985); *Sisk* v. *CIR*, 791 F.2d 58, 60-61 (6th Cir. 1986); *United States* v. *Thomas*, 788 F.2d 1250, 1253-1254 (7th Cir.), cert. denied, 479 U.S. 853 (1986); *Axmann* v. *Ponte*, 892 F.2d 761 (8th Cir. 1990); *United States* v. *Stahl*, 792 F.2d 1438 (9th Cir. 1986), cert. denied, 479 U.S. 1036 (1987); *Stubbs* v. *CIR*, 797 F.2d 936, 938 (11th Cir. 1986).

[20] *Brushaber* v. *Union Pac. R.R.*, 240 U.S. at 24-25; *Coleman* v. *CIR*, 791 F.2d 68, 70 (7th Cir. 1986); *Campbell* v. *Amax Coal Co.*, 610 F.2d 701, 702 (10th Cir. 1979) (withholding on wages).

[21] *United States* v. *Carley*, 783 F.2d 341, 342 (2d Cir.), cert. denied, 476 U.S. 1142 (1986); *Sauers* v. *CIR*, 771 F.2d 64, 69 n.6 (3d Cir. 1985), cert. denied, 476 U.S. 1162 (1986); *Melton* v. *Kurtz*,

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the privilege against compulsory self-incrimination;[22] and (5) that Federal Reserve Notes do not constitute cash or income.[23]

Petitioner does not seriously dispute the conclusion by the court below and other courts that these arguments are not objectively reasonable and, indeed, are frivolous. There is no reason why an individual's adherence to such frivolous positions, in spite of his awareness that they are at odds with the terms of the Internal Revenue Code, should excuse his deliberate refusal to file income tax returns and his attempts to evade the assessment or collection of taxes. This is not a case in which petitioner claims he was unaware of his duties under the tax laws. His defense was that while he was aware of those duties, he did not believe they could properly be imposed on him.

b. Moreover, petitioner's beliefs regarding his immunity from obligations imposed by the Internal Revenue Code are essentially beliefs that the tax laws violate the

575 F.2d 547, 548 (5th Cir. 1978); *Lively* v. *CIR*, 705 F.2d 1017, 1018 (8th Cir. 1983); *Maxfield* v. *United States Postal Service*, 752 F.2d 433, 434 (9th Cir. 1984); *Charczuk* v. *CIR*, 771 F.2d 471, 474 (10th Cir. 1985).

[22] *United States* v. *Edelson*, 604 F.2d 232, 234-235 (3d Cir. 1979); *United States* v. *Reed*, 670 F.2d 622 (5th Cir.), cert. denied, 457 U.S. 1125 (1982); *United States* v. *Evanko*, 604 F.2d 21, 23 (6th Cir. 1979), cert. denied, 444 U.S. 1024 (1980); *United States* v. *Jordan*, 508 F.2d 750, 752 (7th Cir.), cert. denied, 423 U.S. 842 (1975); *United States* v. *Karsky*, 610 F.2d 548, 550-551 (8th Cir. 1979), cert. denied, 444 U.S. 1092 (1980); *United States* v. *Neff*, 615 F.2d 1235, 1238-1241 (9th Cir. 1979), cert. denied, 447 U.S. 925 (1980); *United States* v. *Lawson*, 670 F.2d at 927; *United States* v. *Vance*, 730 F.2d 736, 737-738 (11th Cir. 1984).

[23] *United States* v. *Edelson*, 604 F.2d at 233-234; *United States* v. *Whitesel*, 543 F.2d 1176, 1180-1181 (6th Cir. 1976), cert. denied, 431 U.S. 967 (1977); *United States* v. *Moore*, 627 F.2d 830, 833 (7th Cir. 1980), cert. denied, 450 U.S. 916 (1981); *United States* v. *Daly*, 481 F.2d 28, 30 (8th Cir.), cert. denied, 414 U.S. 1064 (1973); *United States* v. *Schmitz*, 542 F.2d 782, 785 (9th Cir. 1976), cert. denied, 429 U.S. 1105 (1977); *United States* v. *Porth*, 426 F.2d 519, 523 (10th Cir.), cert. denied, 400 U.S. 824 (1970).

Constitution. Some of those contentions are explicitly based on the Sixteenth Amendment or other provisions of the Constitution. But the asserted "belief" that wages are not income also is at bottom a constitutional objection, because it is based on the notion that wages received for labor are paid in an equal exchange for the labor, which results in no gain or profit and which the Constitution therefore does not permit to be subjected to a direct tax. See *United States* v. *Mueller*, 778 F.2d 539, 541 (9th Cir. 1985); *United States* v. *Moore*, 692 F.2d 95, 97 (10th Cir. 1982); *United States* v. *Miller*, 634 F.2d 1134, 1135 (8th Cir. 1980), cert. denied, 451 U.S. 942 (1981). That was the substance of petitioner's defense on the "wages as income" issue at trial. See Tr. 1212-1237, 1273, 1305, 1329-1331, 1360.

The courts have uniformly held that a belief that the Internal Revenue Code is unconstitutional does not negate the element of willfulness in a prosecution arising under the Code, and they accordingly have sustained instructions to that effect.[24] As the Fifth Circuit explained in *United States* v. *Burton*, 737 F.2d 439, 442 (1984):

> Those who believe, even in good faith, that the income tax law is unconstitutional are * * * willful violators if they understand the obligations the statute purports to impose on them. One who believes

[24] See *United States* v. *Kraeger*, 711 F.2d 6, 7 (2d Cir. 1983); *United States* v. *Burton*, 737 F.2d 439, 442 (5th Cir. 1984); *United States* v. *Sassak*, 881 F.2d 276, 281 (6th Cir. 1989); *United States* v. *Grumka*, 728 F.2d 794, 797 (6th Cir. 1984); *United States* v. *Bressler*, 772 F.2d 287, 291 n.2 (7th Cir.), cert. denied, 474 U.S. 1082 (1985); *United States* v. *Miller*, 634 F.2d at 1135; *Haywood* v. *Day*, 619 F.2d 716, 717 (8th Cir.), cert. denied, 446 U.S. 969 (1980); *United States* v. *Ness*, 652 F.2d 890, 893 (9th Cir.), cert. denied, 454 U.S. 1126 (1981); *United States* v. *Mueller*, 778 F.2d at 541; *United States* v. *Hairston*, 819 F.2d 971, 973 n.3 (10th Cir. 1987). The district court's instruction in this case—that a good faith belief that the tax laws are unconstitutional is not objectively reasonable as a matter of law—was the functional equivalent of the instruction approved by the other courts of appeals.

> a statute to be unconstitutional is entitled to challenge it in court, *see* 26 U.S.C. § 7422,[25] but disobeys it only at the risk of criminal penalties should the constitutionality of the statute be upheld. The defendant's good faith belief that the statute is unconstitutional does not negate the willfulness of his defiance of the statute, * * *.

In other words, "it is not the prerogative of the taxpayer to make a personalized finding of unconstitutionality." *United States* v. *Payne*, 800 F.2d 227, 228 (10th Cir. 1986).[26]

This conclusion regarding the scope of a constitutionally based defense is deeply rooted in the Nation's jurisprudence. The principle was applied, for example, in *Reynolds* v. *United States*, 98 U.S. 145 (1878), in which the Court rejected a First Amendment challenge to a law prohibiting polygamy as applied to persons whose religious beliefs commanded that practice. The Court found it sufficient to sustain the conviction that "[e]very act necessary to constitute the crime was knowingly done,

[25] Under 26 U.S.C. 7422, a person may pay the tax and then challenge its constitutionality in a suit for a refund. See, *e.g.*, *United States* v. *Lee*, 455 U.S. 252, 254-255 (1982); *United States* v. *Ptasynski*, 462 U.S. 74, 79 (1983). This alternative means of relief avoids the risk of criminal penalties for non-compliance with the law. The same alternative of course is also available to a person who wants to challenge assessment of a tax on non-constitutional grounds, without the risk of criminal prosecution. Petitioner did not pursue that course. He did file other civil actions seeking an adjudication of his legal arguments, but he then continued to defy the law even after his arguments were rejected as frivolous.

[26] This unanimous view of the courts of appeals is consistent with the statutory text. The provisions under which petitioner was convicted, 26 U.S.C. 7201 and 7203, impose criminal penalties on one who willfully attempts to evade or defeat a tax "imposed by this title" or to file a return "required by this title." There is no suggestion that an individual is excused from liability based on his belief that Title 26 of the United States Code is unconstitutional in whole or in part.

and the crime was therefore knowingly committed." *Id.* at 167. The Court observed that the defense in the case was the defendant's "belief that the law ought not to have been enacted," but concluded that "[i]t matters not that his belief was part of his professed religion: it was still belief, and belief only." *Ibid.* Similarly here, petitioner's belief that the Internal Revenue Code should not have been enacted, and that it therefore could not constitutionally be applied to the compensation he received from American Airlines, does not defeat the showing of willfulness if, as the jury found, he was aware of the requirements of the Code.

Even if petitioner's asserted belief that wages are not income purported to rest on an interpretation of the Code rather than the Constitution, the analysis would be the same. Such a belief would be based not on lack of awareness of the duty imposed by the Code to pay taxes on income or to file returns, but on a fundamental challenge to the jurisdictional reach of the Code that is almost universally understood and respected by millions of other wage earners annually. As in the case of constitutional objections to the applicability of the Tax Code, there is no reason to recognize a defense of mistake of law where, as here, the defendant was aware of the requirements of the Code as construed by the courts but refused to submit to its jurisdiction.

E. Petitioner's Submission Also Is Inconsistent With General Principles of *Mens Rea* Under The Criminal Laws

This Court's decision in *Reynolds* v. *United States* is instructive here for an additional reason. It illuminates a basic analytical flaw in petitioner's repeated contention (Br. 21, 23, 25, 27-28, 30-35) that he had a subjective "belief" that he did not have to pay taxes. Petitioner's use of the term "belief" refers to something quite different from the "intent" or *mens rea* ordinarily required for the commission of a crime.

The various levels of culpability under the criminal laws are based on the actor's mental state in relation to such external factors as the nature of the forbidden conduct, the attendant circumstances, and the result of the conduct. See *Model Penal Code* § 2.02, Comment 1, at 229 (Official Draft and Revised Comments 1985). Under the *Model Penal Code*, for example, the actor's culpability turns on whether he acted purposely, knowingly, recklessly, or negligently. § 2.02(2). See *Liparota* v. *United States*, 471 U.S. 419, 424 n.5 (1985); *United States* v. *Bailey*, 444 U.S. 394, 404 (1980); *United States* v. *United States Gypsum Co.*, 438 U.S. 422, 444 (1978). Within this framework, a person acts "knowingly" with respect to a material element of the offense if he is "aware" that his conduct is of a particular nature, that the relevant circumstances exist, or that his conduct is practically certain to cause the specified result. *Model Penal Code* § 2.02(1). See *United States* v. *Bailey*, 444 U.S. at 404. In other words, knowledge is a matter of *cognition*. Thus, insofar as petitioner contends that knowledge of a legal duty is required for conviction under 26 U.S.C. 7201 and 7203, that requirement is satisfied where it is shown, as it plainly was here, that the defendant was aware of the Internal Revenue Code and the duties it imposed on him.

By contrast, the term "belief" often refers to matters of personal faith and conviction. A "belief" in this sense does not excuse a person from complying with the criminal law. The Court so held in *Reynolds*, explaining, 98 U.S. at 166-167, in language recently quoted in *Employment Division, Department of Human Resources* v. *Smith*, No. 88-1213 (Apr. 17, 1990), slip op. 6:

> Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. * * * Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief su-

perior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

Although petitioner does not base his opposition to the tax laws on religious grounds, he appears to use the term "belief" to mean an individual's conviction as to what is "true" rather than the mental state of knowledge of relevant circumstances—here, the existence of legal duties—that traditionally is relevant for mens rea purposes. Thus, he insists that the courts must respect a tax protester's "sincerely" held beliefs (Br. 21, 27, 32), that "[t]his Court must be especially vigilant to ensure that people who espouse annoying and controversial beliefs, as defenses to a criminal charge, are treated no differently than those whose beliefs are more traditional" (Br. 28), that a court should not focus on the "content of a belief" or "opinions" (Br. 30, 33, 43), and that the Seventh Circuit has entered a dangerous First Amendment thicket by abandoning "neutrality toward the beliefs of tax protesters" and announcing that those beliefs are "impermissible" (Br. 41-42).

It is clear, however, that petitioner was not punished for his subjective "beliefs" about the tax laws; he was punished because of his deliberate refusal to comply with those laws. Even if petitioner's motive for his actions was the assortment of subjective "beliefs" he espouses, his beliefs in the soundness or justness of his conduct or his theories of the law do not negate the element of mens rea where, as here, those beliefs have no plausible basis in the law as generally understood and applied, and the jury found that he knew what the law required of him but intentionally refused to comply. See J. Hall, *General Principles of Criminal Law* 99-100 (2d ed. 1960) (distinguishing motive from *mens rea* and explaining why motive is not an element of the offense). Compare *United States* v. *Pomponio*, 429 U.S. at 12 (no showing of evil "motive" required, beyond proof of intentional

violation of known legal duty); *United States* v. *Mueller*, 778 F.2d at 541 (belief that wages not income under the Constitution was merely the motive for failing to do what the law required).

The instant case presents a striking example of the mischief that the purely subjective test can cause. Petitioner was repeatedly warned in court proceedings to which he was a party that courts had consistently rejected his theories for escaping taxation. During cross-examination at trial, he admitted that he was aware that the decision in *United States* v. *Koliboski*, 732 F.2d 1328, 1329 n.1 (7th Cir. 1984), had stated in capital letters that wages are income. Tr. 1332-1333. He was sufficiently familiar with the case to know that the statement appeared in a footnote. Tr. 1332. Confronted with *Koliboski*, petitioner conceded, "Wages are income for a taxpayer," but then claimed he is not a taxpayer. Tr. 1333. Petitioner also grudgingly admitted that judges in the cases in which he had been a party had issued opinions or made statements telling him that wages are income, Tr. 1334-1336, but claimed that he simply did not believe those judges. Tr. 1368-1369. Petitioner further acknowledged that he had heard the judge give instructions in a friend's trial, but he denied that he learned what the law was. Instead, he said, "I learned what Judge Carroll considered the law to be," and he rejected that position. Tr. 1367-1368. Finally, petitioner acknowledged familiarity with this Court's decision in *Lucas* v. *Earl*, 281 U.S. 111 (1930), in which the Court held that an individual's salary and fees were income subject to tax. Tr. 1406.

It is difficult to imagine a case in which a defendant could be more fully informed about the judicial rejection of the grounds he gave for refusing to conform his conduct to the requirements of the law. Yet, even on these facts, some jurors were reluctant to convict petitioner. Petitioner contends (Pet. 19) that the questions from the jurors during their deliberations and the notes the jury

tendered to the court upon returning the verdict "show that at least some jurors were convinced that petitioner sincerely held his beliefs." In fact, however, the sympathy expressed by the jurors reveals one of the main weaknesses of the purely subjective test for willfulness: it rewards sincerity of belief even when the defendant knows that the belief has been rejected as legally unsound. If sincerity of belief becomes the test, persons like petitioner and his tax protest partners will be the ultimate judges of the requirements of the law, a step that will doubtless encourage others to take chances on violating the law in reliance on repudiated theories.

II. THE REQUIREMENT THAT PETITIONER'S BELIEF AS TO THE LAWFULNESS OF HIS CONDUCT BE OBJECTIVELY REASONABLE DOES NOT VIOLATE HIS CONSTITUTIONAL RIGHTS

Petitioner contends (Br. 36-43) that to define willfulness as containing an objective element in the circumstances of this case would violate the Constitution in three respects: it would apply a change in the law retroactively to him, in violation of principles of fundamental fairness; it would improperly eliminate the requirement of intent in criminal tax statutes; and it would deprive him of his right to have his guilt or innocence determined by a jury.

A. Petitioner Was Not Denied Due Process By A Change In The Law After The Time Of The Conduct Charged In The Indictment

Relying on *Marks* v. *United States*, 430 U.S. 188 (1977), petitioner argues (Br. 36-37) that because the Seventh Circuit adopted an objective test for willfulness in criminal tax prosecutions after the date of the conduct for which he was convicted, applying the rule to him offends fundamental notions of fairness. Petitioner, however, did not raise this contention in the court of appeals or in his petition for a writ of certiorari, and it is

therefore not properly before the Court. In any event, it is without merit.

As early as the decision in *Murdock*, this Court indicated that a mistake-of-law defense must be based on an objectively reasonable belief. The Court has never repudiated that suggestion. Thus, *Murdock* served notice that a good faith belief must be objectively reasonable. Moreover, as petitioner concedes (Br. 23), the Seventh Circuit stated as early as *United States* v. *Moore*, 627 F.2d 830, 833 (1980), cert. denied, 450 U.S. 916 (1981), that a mistake of law must be "objectively reasonable" under the criminal tax laws. That was sufficient to make application of that rule to petitioner reasonably foreseeable. See *United States* v. *Rodgers*, 466 U.S. 475, 484 (1984). Nor is application of that principle to petitioner's case unfair, because petitioner's knowledge of the requirements of the tax laws is established by the fact that he paid taxes and filed returns for ten years before the conduct at issue here, and it is undisputed that petitioner was advised that his beliefs had been rejected by the courts. See *United States* v. *Grumka*, 728 F.2d at 797 ("Grumka's assertion on appeal that he believed in good faith that he was under no legal obligation to pay federal income taxes is at odds with his admission at trial that he knew the Internal Revenue Service had not accepted and the Courts of the United States had not recognized his various rationales for refusing to pay income taxes."). Furthermore, petitioner's various arguments in this case boil down to the claim that the Internal Revenue Code, as applied to him, violates the Constitution. The courts of appeals have unanimously held that such a belief does not negate the element of willfulness. Because that principle goes back at least as far as *Reynolds* v. *United States*, more than 100 years ago, petitioner can scarcely claim unfair surprise in being denied that defense now.

B. The Jury Instruction In This Case Did Not Eliminate The Requirement Of Intent From The Criminal Tax Statutes And Did Not Violate Petitioner's Right To Have His Guilt Or Innocence Determined By A Jury

Petitioner asserts that the district court's instructions violated the Fifth Amendment by eliminating the *mens rea* requirement for criminal tax statutes (Br. 38-39), and violated the Sixth Amendment by depriving petitioner of the right to have a jury decide the issue of guilt or innocence (Br. 40-42).

The jury instructions in this case did not eliminate the *mens rea* element from tax crimes. To the contrary, they defined willfulness to require a finding of an intentional violation of a known legal duty. The instructions to which petitioner objects simply construed the criminal tax statutes as placing limits on the mistakes-of-law defense. Nothing in *Morissette* v. *United States*, 342 U.S. 246 (1952), on which petitioner relies, precludes that construction. In *Morissette*, the defendant, who had taken bomb casings he had found on government property, was charged with conversion under 18 U.S.C. 641. At trial, he sought to raise a mistake-of-fact defense—that he believed the casings were abandoned—but the trial court refused to permit the defense. This Court reversed the conviction, holding, as a matter of statutory construction, that criminal intent is an essential element of an offense under 18 U.S.C. 641. The Court did not suggest that an element of knowledge or intent was *constitutionally* required with respect to the question of abandonment in that case, see 342 U.S. at 254 n.14, much less with respect to the existence of legal duties that are as broadly applicable and widely known as the requirements under the Internal Revenue Code at issue in this case—to file returns and pay taxes on wages. Compare *Lambert* v. *California*, 355 U.S. 225 (1957). Nor did the Court in *Morissette* hold, even as a matter of statutory construction, that the defendant was entitled

to present a mistake-of-law defense. Indeed, in describing what would constitute a "knowing conversion" under the statute, the Court stated: "He must have had knowledge of the facts, though not necessarily the law, that made the taking a conversion." 342 U.S. at 270-271. Thus, *Morissette* is fully consistent with a limitation of objective reasonableness on the availability of a mistake-of-law defense under the criminal tax statutes.

It also was proper for the district court and court of appeals to hold that certain beliefs are not objectively reasonable for purposes of the mistake-of-law defense. A court may clearly decline to submit to the jury a defense based on a belief that the tax laws are unconstitutional—the substance of petitioner's defense in this case—since, as a matter of law, such a belief does not negate the element of willfulness. Compare *Sansone* v. *United States*, 380 U.S. at 347. In arguing that the district court's instruction regarding the unreasonableness of certain beliefs erected an irrebuttable presumption that violated the Due Process Clause, petitioner relies (Br. 37, 41) on *Sandstrom* v. *Montana*, 442 U.S. 510 (1979). In *Sandstrom*, however, the Court expressly distinguished *Reynolds* v. *United States* on the ground that the defendant's constitutionally based religious objection to the polygamy laws was not a defense. See 442 U.S. at 520 n.9. The district court therefore did not commit reversible error in this case by declining to submit the reasonableness of petitioner's constitutional views to the jury.

Even if petitioner's belief that wages are not income was based on the Internal Revenue Code rather than the Constitution, the district court was still correct in instructing the jury that that belief was not objectively reasonable. The questions of fact for the jury to decide in a case such as this are whether the defendant knew of his statutory duties, whether he actually held a particular belief with respect to his legal duties, and whether he held that belief in good faith. But the question whether

a particular belief about the requirements of the law is objectively reasonable is a question of law for the court to decide; objective reasonableness is not a factual issue as to which different juries should be permitted to reach different conclusions. Compare *Sinclair* v. *United States*, 279 U.S. 263, 298-299 (1929) (materiality of false statement question of law for court); *Kungys* v. *United States*, 108 S.Ct. 1537, 1547 (1988) (same).

Finally, even if the issue of objective reasonableness is considered a factual issue for the jury, it was not necessary to submit the issue to the jury in this case because there was no basis on which any factfinder could conclude that petitioner's views were objectively reasonable. Petitioner's asserted belief that his compensation from American Airlines is not income for purposes of the Internal Revenue Code flies in the face of the statutory definition of income to include "[c]ompensation for services." 26 U.S.C. 61(a). Petitioner has pointed to no judicial or other authority suggesting that this definition means something other than what it says. And petitioner's view that wages are not income has been rejected as frivolous by numerous courts. A court is not required to instruct a jury on a particular legal theory of the defense in the absence of any concrete basis in the evidence or applicable law for that theory. See *Mathews* v. *United States*, 485 U.S. 58, 63 (1988); *United States* v. *Bailey*, 444 U.S. at 415; *Battle* v. *United States*, 209 U.S. 36, 38 (1908); *Sparf & Hansen* v. *United States*, 156 U.S. 51, 63-64 (1895). That is the case here, because the record and petitioner's unsubstantiated and bizarre belief that wages are not income fall far short of furnishing a sufficient basis "for a reasonable jury to find in his favor." *Mathews* v. *United States*, 485 U.S. at 63.[27]

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[27] Petitioner also argues (Br. 41-43) that the jury instructions in this case violated the First Amendment because they amounted to a content-based regulation of "beliefs." Petitioner did not raise this issue in the court of appeals, and he made only a passing reference to it in his certiorari petition. Pet. i. In any event, this claim is meritless. As explained above (see pages 36-37, *supra*), petitioner was not punished for his "beliefs," but for his intentional violation of known legal duties under the tax laws. He is not exempted from criminal liability on the ground that his conduct might have been motivated by beliefs the expression of which would be protected by the First Amendment. See *Reynolds* v. *United States*, 98 U.S. at 166-167.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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